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11 [FILE 10-002052 CHE]

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF ARIZONA**

10 In re:

11 HARRY A. ISIKOFF,

12 Debtor.

13 CHASE HOME FINANCE LLC, its
14 assigns and / or successors-in-
15 interest,

16 Movant,

17 v.

18 HARRY A. ISIKOFF, Stanley J.
19 Kartchner, Trustee,
20 Respondents.

Case # 4:10-bk-03517-EWH

Chapter 7 Proceedings

**MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

Re: Real Property located
at 10666 East Pantano Trail
Tucson, AZ 85730

17 Chase Home Finance LLC, ("CHASE"), through undersigned
18 counsel, moves this Court for an Order granting relief from the
19 automatic stay of 11 U.S.C. § 362 and any other limitations
20 against lien enforcement against the property, rents, issues,
21 and profits of Harry A. Isikoff, ("Debtor"); or, in the
22 alternative, conditioning the use, sale, or lease of such
23 property, rents, issues, or profits as is necessary to provide
24 CHASE with adequate protection of its secured interest in

1 certain real property. This Motion is supported by the
2 following Memorandum of Points and Authorities.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 Statement of Facts:

5 1. CHASE is the holder or servicer of a promissory note,
6 ("CHASE Note"), made, executed, and delivered by Harry A.
7 Isikoff and, Sharon J. Isikoff Husband and Wife as Community
8 Property, on or about September 16, 2003 in the original sum of
9 \$240,000.00. The CHASE Note is secured by a Deed of Trust dated
10 September 16, 2003, recorded as a lien in first position at Pima
11 County Recorder's Number 20031830375 against certain real
12 property, ("the Property"), generally described as 10666 East
13 Pantano Trail, Tucson, AZ 85730 and legally described as:

14 A TRACT OF LAND LOCATED IN A PORTION OF LOT 9 OF
15 RINCON RANCH ESTATES, AS SHOWN BY MAP RECORDED IN BOOK
16 8 OF MAPS AND PLATS AT PAGE 8 , PIMA COUNTY, ARIZONA
AND DESCRIBED AS FOLLOWS:

17 COMMENCING AT THE NORTHWEST CORNER OF LOT 9 IN RINCON
18 RANCH ESTATES AS RECORDED IN BOOK 8 OF MAPS AND PLATS
AT PAGE 8 OF THE RECORDS OF PIMA COUNTY, ARIZONA,
BEING A FOUND 2 INCH PIPE;

19 THENCE SOUTH 5 DEGREES, 55 MINUTES, 35 SECONDS, EAST
20 ALONG THE EAST LINE OF SAID LOT 9 FOR 447.06 FEET TO A
FOUND LEAD CAPPED PIPE BEING THE POINT OF BEGINNING;

21 THENCE SOUTH 23 DEGREES, 31 MINUTES, 38 SECONDS, WEST
22 ALONG THE EAST LINE OF SAID LOT 9 FOR 275.26 FEET TO A
SET NO. 4 REBAR WITH R.L.S. #26929 BRASS TAG;

23 THENCE SOUTH 76 DEGREES, 06 MINUTES, 00 SECONDS, WEST
24 ALONG THE SOUTHERLY LINE OF SAID LOT 9 FOR 267.17 FEET
TO A SET NO. 4 REBAR WITH R.L.S. #26929 BRASS TAG;

1 THENCE NORTH 71 DEGREES, 59 MINUTES, 00 SECONDS, WEST
2 ALONG THE SOUTHERLY LINE OF SAID LOT 9 FOR 190.00 FEET
 TO A SET NO. 4 REBAR WITH R.L.S. #26929 BRASS TAG;

3 THENCE NORTH 11 DEGREES, 47 MINUTES, 07 SECONDS, EAST
4 FOR 312.01 FEET TO A SET NO. 4 REBAR WITH R.L.S.
 #26929 BRASS TAG;

5 THENCE NORTH 66 DEGREES, 50 MINUTES, 39 SECONDS, EAST
6 FOR 280.26 FEET TO A SET NO. 4 REBAR WITH R.L.S.
 #26929 BRASS TAG;

7 THENCE SOUTH 55 DEGREES, 21 MINUTES, 56 SECONDS, EAST
8 FOR 277.72 FEET TO THE TRUE POINT OF BEGINNING . (JV
 ARB 93)

9 TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND
10 UTILITIES AS DESCRIBED AS FOLLOWS:

11 A TRACT OF LAND LOCATED IN A PORTION OF LOT 9 IN
12 RINCON RANCH ESTATES AS RECORDED IN BOOK 8 OF MAPS AND
13 PLATS AT PAGE 8 OF THE RECORDS OF PIMA COUNTY, ARIZONA
14 AND DESCRIBED AS FOLLOWS:

15 COMMENCING AT THE NORTHEAST CORNER OF LOT 9 IN RINCON
16 RANCH ESTATES AS RECORDED IN BOOK 8 OF MAPS AND PLATS
17 AT PAGE 8 OF THE RECORDS OF PIMA COUNTY, ARIZONA,
18 BEING A FOUND 2 INCH PIPE;

19 THENCE SOUTH 67 DEGREES, 38 MINUTES, 24 SECONDS, WEST
20 FOR 83.73 FEET TO THE POINT OF BEGINNING OF SAID
21 EIGHTEEN FOOT EASEMENT BEING NINE FEET ON EACHSIDE OF
22 THE FOLLOWING DESCRIBED CENTERLINE:

23 THENCE SOUTH 10 DEGREES, 00 MINUTES, 56 SECONDS, EAST
24 FOR 61.22 FEET;

 THENCE SOUTH 15 DEGREES, 25 MINUTES, 58 SECONDS, WEST
 60.61 FEET;

 THENCE SOUTH 0 DEGREES, 56 MINUTES, 43 SECONDS, EAST
 FOR 82.54 FEET;

 THENCE SOUTH 17 DEGREES, 25 MINUTES, 59 SECONDS, WEST
 FOR 50.92 FEET;

 THENCE SOUTH 46 DEGREES, 52 MINUTES, 31 SECONDS, WEST
 FOR 54.02 FEET TO THE POINT OF TERMINATION, SIDELINES
 TO SAID EASEMENT TERMINATING AGAINST ROADS AND TRACT
 B.

 .

1 True and correct copies of the CHASE Note, Deed of Trust,
2 and Assignment of the Deed of Trust are attached hereto as
3 Exhibits 'A', 'B', and 'C'. Upon information and belief the
4 property was transferred to the Debtor.

5 2. The Debtor filed a Chapter 7 Bankruptcy petition on
6 February 11, 2010.

7 3. The regular monthly payments on the CHASE Note falling
8 due since December, 2009 have not been paid.

9 4. The total outstanding debt owed on the CHASE Note is
10 now approximately \$152,455.59.

11 5. In accordance with the terms of the CHASE Note and
12 Deed of Trust, the CHASE Note is in default and, accordingly,
13 the entire unpaid principal balance together with interest, late
14 charges, and attorney's fees and costs may be declared due.

15 6. In connection with the above-described default, CHASE
16 has incurred attorney's fees and costs to protect its secured
17 interest.

18 7. Upon information and belief, there is no equity in the
19 Property because the liens exceed the fair market value thereof.

20 8. Upon information and belief, the Property is not
21 necessary for an effective reorganization.

22 9. The secured interest of CHASE in the Property has not
23 been adequately protected, nor has CHASE been offered adequate
24 protection by the Debtor.

1 **Discussion:**

2 Bankruptcy Code § 362(d) provides for relief from the
3 automatic stay upon the request of a party in interest on either
4 of two grounds: (1) for cause, including lack of adequate
5 protection of an interest in the property; or (2) the debtor has
6 no equity in the property and the property is not necessary for
7 an effective reorganization of the debtor.

8 The party seeking relief from the stay has the burden of
9 proof only on the issue of the debtor's equity in the
10 collateral; any party opposing the requested relief has the
11 burden of proof on all other issues. 11 U.S.C. § 362(g).
12 Therefore, unless a party opposing relief produces evidence on
13 these issues, CHASE is entitled to relief without presenting any
14 evidence whatsoever. See, In re L.H. & A. Realty Co., Inc., 57
15 B.R. 265 (Bankr. D. Vt. 1986).

16 **I. LACK OF EQUITY IN THE PROPERTY**

17 Bankruptcy Code § 362(d)(2) authorizes the court to lift
18 the automatic stay of an act against property where the debtor
19 has no equity in such property and the property is not necessary
20 for an effective reorganization. In re Diplomat Electronics
21 Corp., 82 B.R. 688 (Bankr. S.D.N.Y. 1988).

22 In determining whether there is equity in the property, all
23 encumbrances on the property, including all costs and fees must
24 be considered. In re McCall, 25 B.R. 199 (Bankr. E.D. Pa.

1 1982); In re Taylor, 28 B.R. 691 (Bankr. S.D. Ohio 1983); In re
2 Paolino, 68 B.R. 416 (Bankr. E.D. Pa. 1986); In re Rye, 54 B.R.
3 180 (Bankr. D.S.C. 1985).

4 Where the Court is determining the equity in the property,
5 it is immaterial whether all the lienholders join in their
6 request for relief from the stay. In re Nashua Trust Co., 73
7 B.R. 423 (Bankr. D.N.J. 1987). In addition, the valuation
8 assigned to the subject property must be reduced by an amount
9 sufficient to cover the creditor's estimated cost of liquidating
10 the property. La Jolla Mortgage Fund, 18 B.R. 283 (Bankr. S.D.
11 Cal. 1982).

12 In the instant case, CHASE alleges that there is no equity
13 in the Property and no prospect or intent to reorganize. At the
14 final hearing on this Motion, if any, CHASE will produce
15 evidence that there is no equity in the Property. Any party
16 opposing this Motion has the burden of proof on all other
17 issues. 11 U.S.C. § 362(g).

18 **II. RELIEF FOR CAUSE - Lack of Adequate Protection**

19 Even where the debtor has equity in Property, relief for
20 cause may be granted by the Court pursuant to 11 U.S.C. §
21 362(d)(1), for cause, including where the Creditor's interest in
22 the property is not adequately protected. In re Pliss, 34 B.R.
23 432 (Bankr. D. Or. 1983).

1 Any party opposing this Motion has the burden of proving a
2 lack of cause, even when the debtor asserts that the equity in
3 the property furnishes the creditor with adequate protection.
4 In re Kim, 71 B.R. 1011 (Bankr. C.D. Cal. 1987) (overruled on
5 other grounds).

6 The creditor's substantiated allegations that it is
7 entitled to relief for cause are sufficient for granting relief
8 if not refuted by the debtor. In re Marta Group, Inc., 33 B.R.
9 634 (Bankr. E.D. Pa. 1983). If the debtor fails to meet this
10 burden, the moving party is entitled to relief under §
11 362(d)(1). In re Kim, supra.

12 In the instant case, the Debtor has been in default under
13 the terms of the CHASE Note since December, 2009. This default
14 constitutes cause under § 362(d)(1). Additionally, the Debtor
15 has not provided CHASE with adequate protection of its interest
16 in the Property. Failure to provide adequate protection is also
17 cause to lift the automatic stay.

18 **III. AUTOMATIC TERMINATION OF THE STAY AS A MATTER OF LAW**

19 The automatic stay is terminated as a matter of law 30 days
20 after this Motion is filed with the Court unless the Court,
21 after notice and a hearing, orders the stay continued in effect
22 pending the outcome of a final hearing on this Motion. 11
23 U.S.C. § 362(e).

1 **IV. PRE-FILING CERTIFICATION PURSUANT TO RULE 4001-1(b) .**

2 Pursuant to Local Rule 4001-1 (b), the undersigned hereby
3 certifies that counsel for the movant sent a letter to counsel
4 for the Debtor(s), or if unrepresented, directly to the
5 Debtor(s) at least 5 business days before filing the present
6 motion seeking to resolve the issues necessitating the motion,
7 and that counsel for the movant received no response written or
8 otherwise.

9 **REQUEST FOR RELIEF**

10 For the foregoing reasons, CHASE respectfully
11 requests:

12 1. That all stays, including but not limited to, any
13 injunction, restraining order, and the automatic stay provided
14 by 11 U.S.C. § 362 be terminated or modified to permit CHASE,
15 the successor Trustee to the Deed of Trust, or such persons as
16 the Court may deem appropriate, to take any and all action
17 necessary and appropriate to enforce CHASE's interest against
18 the Property, including, but not limited to, the right to
19 declare all sums secured by the Deed of Trust to be immediately
20 due and payable; to exercise any assignment of rents; to bring a
21 foreclosure action in any Court of competent jurisdiction; to
22 notice, conduct or continue a judicial foreclosure or Trustee's
23 Sale; and to apply the proceeds therefrom as authorized by the
24 Deed of Trust and applicable state law;

1 2. That pending final hearing on the merits hereof, an
2 Order may be entered permitting CHASE to record, mail, post, and
3 publish Notice of Trustee's Sale under the Deed of Trust and
4 state law, except that CHASE shall be directed to postpone the
5 Trustee's Sale from time to time as necessary until this court
6 grants further relief pursuant to 11 U.S.C. § 362(d) or (e), or
7 until the automatic stay expires by operation of law.

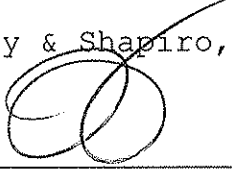
8 In the alternative, that CHASE be awarded adequate
9 protection of its interest in the Property, more specifically
10 that the Debtor be ordered to pay all amounts now in arrears
11 under the Deed of Trust; maintain monthly cash payments to CHASE
12 equal to the regular monthly payment amount for the continued
13 use and occupancy of the Property and to protect the interests
14 of CHASE; and further that CHASE shall be granted immediate
15 relief from the automatic stay for any failure by the Debtor to
16 adequately protect CHASE's interest in the Property or make the
17 required payments;

18 3. That this Court's Order herein be binding on the
19 Debtor with respect to any subsequent conversion to another
20 chapter or subsequent filing of another bankruptcy petition by
21 the Debtor which may affect CHASE's interest in the Property;
22 and
23
24

1 4. For such other and further relief as this Court deems
2 just and equitable.

3
4 Respectfully submitted this 27 day of March, 2010.

5
6 Perry & Shapiro, L.L.P.

7 
8 _____
9 Christopher R. Perry
10 Jason P. Sherman
11 Attorney for Chase Home Finance
12 LLC

11 Copy of the foregoing was mailed
12 this 29 day of March, 2010 to:

13 Chapter 7 Trustee:
14 Stanley J. Kartchner
15 7090 N. Oracle Rd., Ste. 178-204
16 Tucson, AZ 85704

17 Attorney for Debtor:
18 James I Olsen
19 15396 North 83rd Avenues
20 Suite F-101
21 Peoria, AZ 85381

22 Debtor:
23 Harry A. Isikoff
24 10666 East Pantano Trail
Tucson, AZ 85730

United States Bankruptcy Court
38 S Scott Ave, Suite 204
Tucson, AZ 85701

1 Bank One/Chase
8333 Ridgepoint Dr
2 Irving, TX 75063

3 IRS Federal Taxes
PO Box 21126
4 Philadelphia, PA 19114

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6 By Annemulle
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